19 49 **File No.** f. Contract II (CR)

Legal Department

B **BRANCH**

Subject:— Rules under the Bombay Forward Contract Act 1947

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f. (Contract II /47
No. (R)

260-R

Legal Department.

The by-laws sent by the Bombay Bullion Association are in a crude form. They are badly worded. They lack precision and they could not, however, be revised from the drafting point of view within a short space of time. It is understood that their punlication is required by the association without any delay in consequence of the fact that the working of the association is held up. They are scrutinised to see if they fall within the scope of section 6 of the Bombay Forward Contracts Control Act, 1947 (Bom. LXIV of 1947) under which they are purported to be made.

2. By-law 1.- The definitions may be rearranged in alphabetical order.

In Article 33 of the Articles of Association the expressions used are "Chairman" and "Vice-Chairman" of the Board. The definition of "President" may therefore be revised as follows:-

"(5) "President" means the President or Chairman or Vice President or Vice Chairman of the Board and includes the President or Chairman for the time being."

3. By-laws 8 to 10 .- The subject-matter of these by-laws is covered by section 3 of the Bombay Forward Contracts Control Act, 1947, and no by-laws can be made on the subject under section 6. and These by-laws may therefore be deleted. The remaining by-laws may be renumbered and cross references corrected.

4. By-law 28 .- This by-law provides for the expulsion, suspension and fining of a member. Under sub-section (3) of section 6 of the Act, the by-laws may provide that a contravention of any of the by-laws shall render a member liable to expulsion, suspension, fine or other non-monetary penalty. By-law 28 may, therefore, be redrafted as follows :-

"Any member of the company shall be liable to expulsion suspension or fine not exceeding Rs. ..x..... for contravening any of the provisions of these by-laws."

x to be filled in

The other provisions of by-law 23 should be relegated to the Rules of the Association. They would not be covered by the provisions of section 6 of the Act.

5. By-law 31. - The second sentence is not intra vires and may be omitted.

6. By-law 36(2) .- seems to be xxxxx covered by section 6(1) and (2) (g), (k) and (m). It is for the Department to decide whether from the administration point of view it should be retained or not.

7. By-law 43 .- Sub-clause (1) suggested in F.D. note at p. 23 as slightly amended is in order.

Sub-clause (2) has been suitably revised.

As desired by F.D., a separate by-law as follows may be inserted after by-law 44 for requiring the approval of Government to any resolution declaring or ending an emergency, namely:-

"45. Notwithstanding anything contained in the last two preceding by-laws, any resolution passed for declaring an emergency or forending such emergency shall be submitted to the Provincial Government xx for its approval and shall not take effect unless and until it is approved by the Government. "

8. By-law 45.- This by-law may be deleted. It should be included in the rules under section 3.

9. By-law 46. - Same remarks as on by-law 45. The subsequent by-laws may be renumbered.

10. By-law 47. - It is not easy to follow by-law 47 regarding arbitration. It seems that the word "or" in line seven of the by-law has been wrongly inserted and that the word should, therefore, be omitted from the by-law.

11. By-law 61 .- It appears that the intention of the by-law is that the party in whose favour the award is given should pay not only the costs incurred for taking legal advice but also the arbitrators' fees. If so, the by-law will have to be recast to make this

clear . The provision in the by-law that the costs on account of taking legal advice and the arbitrators' fees should be paid in advance does not seem to be-- be proper since it will not be possible for the party in whose favour the award is given to know in advance the arbitrators' decision and pay the amount in advance. It will be sufficient if a provision is made for payment of the costs and fees as soon as the award is given. The by-law may be worded as follows :-

"If the arbitrators or the umpire of the Board find it necessary to obtain any legal advice in respect of the dispute the arbitrators, the umpire or the Board, as the case may be, may in their discretion direct that the costs incurred in obtaining such advice shall be paid by the party in whose favour the award is given, and such party shall pay immediately after the award is given such costs together with the fees payable to the arbitrators."

12. By-law 75. - The revised draft for by-law 67(3) (iii) suggested in F.D. note at p. 30 as slightly amended is in order and may be inserted as by-law 75.

13. By-law 114. - which refers to payment of sales tax does not seem to be necessary. Moreover, it is doubtful whether such a by-law would be covered by the provisions of section 6. The by-law may, therefore, be omitted.

14. At the time of the final publication of the by-laws the preamble may be as follows, namely:-

"The following by-laws made by the Bombay Bullion Association, Limited, under section 6 of the Bombay Forward Contracts Control Act, 1947(Bom. LXIV of 1947), having been sanctioned by the Government of Bombay, are hereby published under sub-section (4) of the said sect 6 for general information:-

15. As the Association has urged that their work

cannot be proceeded with unless the by-laws are finally issued, the draft by-laws as revised in the light of the above remarks may be sanctioned for the present and the Association may be asked to submit in due course for detailed scrutiny revised draft by-laws suitably recast so as to make them relatable to the various clauses of section 6.

Sd/- J.H.Dhurandar.

16.2

Additional Secretary to Government.

U.M. to F.D. No. 120 -Confl , dated the 19th February 1949.

V.M.D. /8-6
4c.

Legal Department.

The draft By-Law 104A and Form No. 4A proposed by the Bombay Bullion Association at pages 5 and 7 ante, as slightly amended, are in order.

By-Law 104A .- As the proposed form will form part of the By-laws, the draft By-law has been suitably amended. It should not be left to the Board to amend the form as that form is now embodied in the Stamp Act. For this purpose the By-Laws will have to be amend amended with the sanction of Government.

Form 4A .-The draft form is amended to make it clear that the stamp duty is payable per unit or part thereof.

Sd/-
26-3.

Additional Secretary to Government.

U.R. to F.D.' No. 3323 , dated the 26th March 1949.

V.M.D. /2-6
46.

Legal Department.

In place of Finance Department draft notifications, refised draft notifications are sent herewith. As some of the by-laws were vague and not properly worded, they have been revised from the drafting point of vies.

Sd/- J.R.Dhurandar.

20-8.

Additional Secretary to Government.

U.R. to F.D. No. 9392 , dated the 20th August 1949.

V.M.D. /2-8.
4è.